

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY SANDLER, ¹	§
	§
Respondent Below-	§ No. 710, 2011
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware,
	§ in and for Sussex County
WANDA O'SHEA,	§ File No. CS10-01374
	§ Petition No. 10-06729
Petitioner Below-	§
Appellee.	§

Submitted: May 18, 2012

Decided: July 12, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 12th day of July 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Gary Sandler ("Husband"), filed this appeal from an order of the Family Court, dated November 30, 2011, which divided the parties' property ancillary to their divorce. We find no merit to the appeal. Accordingly, we affirm the Family Court's judgment.

(2) The record reflects that the parties were married in 2002, separated in 2008, and divorced in 2010. This was the second marriage for both parties. They had no children together. The parties lived in the home that Husband had owned

¹ The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

prior to the marriage. The parties refinanced the property in 2007 and added Wife's name to both the deed and the mortgage on the property. Wife also owned a home prior to the marriage. Wife's home was mortgage-free and she continued to own it until she transferred it in 2009 back to her parents from whom she had acquired it.

(3) The Family Court held a hearing on matters ancillary to the parties' divorce in August 2011. Among other things, the trial court ordered that Wife was entitled to 14% of the value of Husband's pre-marital home, which became a mixed marital asset when the parties refinanced the property in 2007. The Family Court found that Wife had contributed to the increase in the value of the home by depositing her paychecks into a joint bank account from which Husband paid the mortgage and other household debts. The Family Court also accepted Wife's testimony that she had contributed \$40,000 of premarital assets, which she had inherited from her grandmother, toward a renovation of the marital home. The trial court also held that Wife's premarital home was not a marital asset and thus was excluded from the marital estate. Husband now appeals.

(4) In his opening brief on appeal, Husband argues that the Family Court erred in awarding Wife the full amount of her claimed contributions (\$40,000) to improvements made to the marital home. Husband also contends that the Family

Court erred in excluding Wife's premarital home from the marital estate and in dividing the marital debt equally between the parties.²

(5) The Family Court has broad discretion when dividing marital property pursuant to 13 Del. C. § 1513.³ On appeal from a property division order, we review the facts and the law, as well as the inferences and deductions made by the trial judge.⁴ Conclusions of law are reviewed *de novo*. If the law was correctly applied, we review for an abuse of discretion. We will not disturb findings of fact unless they are clearly wrong and the doing of justice requires their overturn.⁵ Similarly, questions of credibility will not be disturbed on appeal unless clearly erroneous.⁶

(6) In this case, the Family Court considered all of the relevant factors under 13 Del. C. § 1513(a)⁷ in dividing the parties' marital estate. Based on the evidence presented the trial court found that the marital home was a mixed marital

² Although Husband contends in his summary of argument that the Family Court erred in apportioning the debt equally between the parties, he does not raise any corresponding argument in the body of his brief. Accordingly, we do not address the division of debts on appeal. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

³ *Linder v. Linder*, 496 A.2d 1028, 1030 (Del. 1985).

⁴ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

⁵ *Forester v. Forester*, 953 A.2d 175, 179 (Del. 2008).

⁶ *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

⁷ DEL. CODE ANN. tit. 13, § 1513(a) provides that, in determining how to equitably divide marital property between the parties following their divorce, the Family Court is required to consider the following factors: (1) the length of the marriage; (2) any prior marriage of the parties; (3) the age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; (4) whether the property award is in lieu of alimony; (5) the opportunity of each for future acquisitions of capital assets and income; (6) the contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband or wife; (7) the value of the property set apart to each party; (8) the economic circumstances of each party at the time the division is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live; (9) whether the property was acquired by gift, except those gifts excluded by paragraph (b)(1) of this section; (10) the debts of the parties; and (11) tax consequences.

asset in light of the parties' 2007 refinancing and Wife's contributions of premarital assets towards renovations and her financial contributions to the joint account that Husband used to pay the mortgage and other monthly bills. The trial court acknowledged that the applicable formula for apportioning Wife's interest in the increased value of Husband's premarital property in light of Wife's contributions to such increase is set forth in *Albanese v. Albanese*.⁸ The Family Court was unable to apply the *Albanese* formula in this case, however, because there was no evidence presented concerning the mortgage value on the home prior to the marriage or the amount of equity in the home at the time of the refinancing.

(7) In order to determine Wife's interest in the home, the Family Court utilized the appraised value of the home at the time of the refinancing in 2007, which was \$290,000,⁹ and determined that Wife's contribution of \$40,000 of her premarital assets to improving the property represented 14% of the value of the home at the time. The Family Court thus determined that the equitable distribution of the equity in the home should be divided 86/14 in favor of Husband.¹⁰ The

⁸*Albanese v. Albanese*, 1996 WL 69824 (Del. Feb. 8, 1996). The *Albanese* formula requires the trial court to: (i) fix the ratio of the non-marital interest to the total non-marital and marital investment; (ii) subject the marital portion to equitable distribution; and (iii) in making the equitable distribution, determine the monetary and nonmonetary contributions of each spouse, and the effort expended by each spouse in accumulating the marital property.

⁹ The evidence included an appraisal report on the property, which reflected that the property was valued at \$160,000 when the parties married in 2002. In 2007, after the property was renovated and the parties refinanced, the property appraised at \$290,000. In 2010, at the time of their divorce, the property was appraised at \$212,000.

¹⁰ The Family Court gave Husband 90 days to attempt to refinance the property and to pay Wife \$29,680, which represented 14% of the appraised value of the home at the time of the hearing. Alternatively, if the property were to be sold, the net proceeds from the sale would be divided 86/14 in Husband's favor. Husband's contention in his opening brief that the Family Court awarded Wife "a dollar for dollar" credit for her \$40,000 investment in the property is simply incorrect.

Family Court further found that Wife's premarital home was entirely Wife's premarital property and was not part of the marital estate. Wife had purchased the home in 1999. There was no mortgage on the property and no evidence that Husband had made any monetary or nonmonetary contributions with respect to Wife's premarital property during the course of the marriage.¹¹ Finally, with respect to the marital debts, the Family Court held each party responsible for half of the marital debt that was not otherwise specifically assigned to either party.

(8) Husband argues that the Family Court erred in awarding Wife 14% of the value of the home without any evidence, other than her own testimony, of her financial contribution towards the increased value of the home. Husband also contends that the Family Court erred in excluding Wife's premarital home from the marital estate.

(9) It is unfortunate that the Husband did not present the evidence necessary for the Family Court to conduct the *Albanese* analysis. Given the evidence presented at the hearing, however, we find the Family Court's conclusions to be supported by the record. The Family Court was in the best position to assess the credibility of the witnesses.¹² We find no abuse of the Family Court's discretion in accepting Wife's testimony that she had contributed \$40,000 of inherited money toward renovations of the property. Moreover, we find no error

¹¹ See *Albanese v. Albanese*, 1996 WL 69824 (Del. Feb. 8, 1996).

¹² *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

in the Family Court's conclusion that Wife's premarital home was not part of the marital estate. Having carefully considered the parties' respective positions and the record on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Family Court's well-reasoned decision dated November 30, 2011. The Family Court's findings of fact are supported by the evidence before it, and we find no error in its division of property.¹³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹³ *Gregory J.M. v. Carolyn A.M.*, 442 A.2d 1373, 1374 (Del.1982).